

By: Deuell

S.B. No. 1209

A BILL TO BE ENTITLED

AN ACT

relating to the licensing and regulation of the practice of dietetics and nutrition.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The heading to Chapter 701, Occupations Code, is amended to read as follows:

DIETITIANS AND NUTRITIONISTS

SECTION 2. Section 701.001, Occupations Code, is amended to read as follows:

Sec. 701.001. SHORT TITLE. This chapter may be cited as the Texas Dietetics and Nutrition Practice ~~[Licensed Dietitian]~~ Act.

SECTION 3. Section 701.002, Occupations Code, is amended to read as follows:

Sec. 701.002. DEFINITIONS. (a) In this chapter:

(1) "Board" means the Texas Board of Dietetics and Nutrition.

(2) "Commissioner" means the executive commissioner of the Health and Human Services Commission ~~[public health]~~.

(3) ~~[(2)]~~ "Department" means the [Texas] Department of State Health Services.

(4) ~~[(3)]~~ "Dietetics" means the professional discipline of applying and integrating scientific principles of food, nutrition, biochemistry, physiology, management, and behavioral and social sciences under different health, social,

1 cultural, physical, psychological, and economic conditions for the
2 proper nourishment, care, and education of an individual or group
3 throughout the life cycle to achieve, ~~[and]~~ maintain, and restore
4 human health through [~~— The term includes~~] the development,
5 management, and provision of nutrition services or medical
6 nutrition therapy.

7 ~~[(4) "Dietitians board" means the Texas State Board of~~
8 ~~Examiners of Dietitians.]~~

9 (5) "Licensed dietitian and nutritionist" means a
10 person licensed under this chapter.

11 (6) "Medical nutrition therapy" means the component of
12 nutrition care relating to:

13 (A) interpreting and recommending nutrient needs
14 relative to medically prescribed diets, including tube feedings,
15 specialized intravenous solutions, and specialized oral feedings;

16 (B) food, nutrient, nutritional supplement, and
17 prescription and nonprescription drug interactions; and

18 (C) developing and managing food service
19 operations, the chief functions of which are the provision of
20 nutrition services and medically prescribed diets.

21 (7) "Medically prescribed diet" means a diet
22 prescribed by or in consultation with a physician licensed in this
23 state for an individual whose health status is impaired or at risk
24 because of disease, injury, or surgery and whose specific food or
25 nutrient levels must be monitored or altered as a component of a
26 treatment program.

27 (8) ~~[(6)]~~ "Nutrition assessment" means evaluating the

1 nutritional needs of an individual or group based on appropriate
2 biochemical, anthropometric, physical, and dietary data to
3 determine nutrient needs and recommend appropriate nutrition
4 intervention [~~nutritional intake~~], including enteral and
5 parenteral nutrition.

6 (9) [~~7~~] "Nutrition counseling" means advising and
7 assisting an individual or group on appropriate nutrition
8 intervention [~~nutritional intake~~] by integrating information from
9 a nutrition assessment with information on food and other sources
10 of nutrients and meal preparation consistent with cultural
11 background and socioeconomic status.

12 (10) [~~8~~] "Nutrition services" means:

13 (A) assessing the nutrition [~~nutritional~~] needs
14 of an individual or group relative to maintenance or preventive or
15 restorative care and determining constraints and resources in the
16 practice;

17 (B) establishing priorities, objectives, and
18 goals that meet nutrition [~~nutritional~~] needs and are consistent
19 with constraints and available resources;

20 (C) providing nutrition education and counseling
21 as components of maintenance or preventive or restorative care [~~in~~
22 ~~health and disease~~];

23 (D) developing, implementing, and managing
24 nutrition [~~nutritional~~] care systems; or

25 (E) evaluating, changing, and maintaining
26 appropriate quality standards in food and nutrition [~~nutritional~~
27 ~~care~~] services.

1 (11) [~~(9)~~] "Provisional licensed dietitian and
2 nutritionist" means a person provisionally licensed under this
3 chapter.

4 (b) The terms "dietetics" and "nutrition" have the same
5 meaning unless the context clearly requires a different
6 construction.

7 SECTION 4. Section 701.003, Occupations Code, is amended to
8 read as follows:

9 Sec. 701.003. APPLICATION OF SUNSET ACT. The Texas [~~State~~]
10 Board of Dietetics and Nutrition [~~Examiners of Dietitians~~] is
11 subject to Chapter 325, Government Code (Texas Sunset Act). Unless
12 continued in existence as provided by that chapter, the board is
13 abolished September 1, 2017 [~~2005~~].

14 SECTION 5. Subchapter A, Chapter 701, Occupations Code, is
15 amended by adding Section 701.004 to read as follows:

16 Sec. 701.004. APPLICATION OF CHAPTER. (a) This chapter
17 does not apply to:

18 (1) a retailer that furnishes free oral or written
19 general nutrition information to a customer on food, food
20 materials, dietary supplements, and other goods sold at the
21 retailer's establishment in connection with the marketing and
22 distribution of those goods at the retailer's establishment, if the
23 information is not false, deceptive, or misleading and the retailer
24 does not represent that the retailer is a dietitian and
25 nutritionist;

26 (2) a person that furnishes free oral or written
27 nutrition information on food, food materials, or dietary

1 supplements, if the information is not false, deceptive, or
2 misleading and the person does not represent that the person is a
3 dietitian and nutritionist;

4 (3) a person engaged in the practice of the tenets of
5 any religion, sect, or denomination;

6 (4) a person who freely disseminates information,
7 conducts a class or seminar, or gives a speech related to dietetics
8 if the person does not represent that the person is a dietitian and
9 nutritionist;

10 (5) a licensed health care professional practicing
11 within the authorized scope of the person's license;

12 (6) a student or trainee working under the direct
13 supervision of a licensed dietitian and nutritionist for a limited
14 period as determined by the board, while fulfilling an experience
15 requirement or pursuing a course of study to meet requirements for a
16 license under this chapter;

17 (7) a dietitian and nutritionist serving in the United
18 States armed forces or the United States Public Health Service or
19 employed by the Department of Veterans Affairs when performing
20 duties associated with that service or employment;

21 (8) a person assisting in the practice of dietetics
22 under the direct supervision of a licensed dietitian and
23 nutritionist and performing only support activities that do not
24 require formal academic training in the basic food, nutrition,
25 chemical, biological, behavioral, and social sciences that are used
26 in the practice of dietetics;

27 (9) a person employed by or contracting with this

1 state or a political subdivision of this state, including a school
2 district, who is engaged in the practice of dietetics within the
3 scope of the person's employment; or

4 (10) a person providing a program of weight control
5 services if the program has been reviewed by, consultation is
6 available from, and no program change can be initiated without
7 prior approval of:

8 (A) a licensed dietitian and nutritionist;

9 (B) a dietitian and nutritionist licensed in
10 another state that has licensing requirements that are at least as
11 stringent as the requirements under this chapter; or

12 (C) a dietitian registered by the Commission on
13 Dietetic Registration of the American Dietetic Association.

14 (b) This chapter does not authorize a person to engage in
15 the practice of medicine in violation of Subtitle B.

16 SECTION 6. The heading to Subchapter B, Chapter 701,
17 Occupations Code, is amended to read as follows:

18 SUBCHAPTER B. TEXAS [~~STATE~~] BOARD OF DIETETICS AND NUTRITION

19 ~~[EXAMINERS OF DIETITIANS]~~

20 SECTION 7. Section 701.051, Occupations Code, is amended to
21 read as follows:

22 Sec. 701.051. [~~DIETITIANS~~] BOARD MEMBERSHIP. (a) The
23 Texas [~~State~~] Board of Dietetics and Nutrition [~~Examiners of~~
24 ~~Dietitians~~] consists of nine members appointed by the governor with
25 the advice and consent of the senate as follows:

26 (1) six licensed dietitian and nutritionist members,
27 each of whom has been licensed under this chapter for not less than

1 three years before the member's date of appointment; and

2 (2) three members who represent the public.

3 (b) In appointing dietitian and nutritionist members to the
4 [~~dietitians~~] board, the governor shall attempt to maintain balanced
5 representation among the following primary areas of expertise
6 included in the professional discipline of dietetics:

7 (1) clinical;

8 (2) educational;

9 (3) management;

10 (4) consultation; and

11 (5) community.

12 (c) Appointments to the [~~dietitians~~] board shall be made
13 without regard to the race, color, disability, sex, religion, age,
14 or national origin of the appointee.

15 SECTION 8. Section 701.052, Occupations Code, is amended to
16 read as follows:

17 Sec. 701.052. ELIGIBILITY OF PUBLIC MEMBERS. A person is
18 not eligible for appointment as a public member of the [~~dietitians~~]
19 board if the person or the person's spouse:

20 (1) is registered, certified, or licensed by an
21 occupational regulatory agency in the field of dietetics;

22 (2) is employed by or participates in the management
23 of a business entity or other organization regulated by or
24 receiving funds from the board;

25 (3) owns or controls directly or indirectly more than
26 a 10 percent interest in a business entity or other organization
27 regulated by or receiving funds from the board; or

1 (4) uses or receives a substantial amount of tangible
2 goods, services, or funds from the board, other than compensation
3 or reimbursement authorized by law for board membership,
4 attendance, or expenses.

5 SECTION 9. Sections 701.053(b), (c), and (d), Occupations
6 Code, are amended to read as follows:

7 (b) An officer, employee, or paid consultant of a Texas
8 trade association in the field of dietetics may not be a
9 ~~[dietitians]~~ board member and may not be an employee of the board
10 who is exempt from the state's position classification plan or is
11 compensated at or above the amount prescribed by the General
12 Appropriations Act for step 1, salary group A17, of the position
13 classification salary schedule.

14 (c) A person who is the spouse of an officer, manager, or
15 paid consultant of a Texas trade association in the field of
16 dietetics may not be a ~~[dietitians]~~ board member and may not be an
17 employee of the board who is exempt from the state's position
18 classification plan or is compensated at or above the amount
19 prescribed by the General Appropriations Act for step 1, salary
20 group A17, of the position classification salary schedule.

21 (d) A person may not serve as a member of the ~~[dietitians]~~
22 board or act as the general counsel to the board if the person is
23 required to register as a lobbyist under Chapter 305, Government
24 Code, because of the person's activities for compensation on behalf
25 of a profession related to the operation of the board.

26 SECTION 10. Section 701.054, Occupations Code, is amended
27 to read as follows:

1 Sec. 701.054. TERMS. Members of the [~~dietitians~~] board
2 serve staggered six-year terms. The terms of two members begin on
3 September 1 of each odd-numbered year.

4 SECTION 11. Section 701.055, Occupations Code, is amended
5 to read as follows:

6 Sec. 701.055. GROUNDS FOR REMOVAL. (a) It is a ground for
7 removal from the [~~dietitians~~] board that a member:

8 (1) does not have at the time of appointment the
9 qualifications required for appointment to the board;

10 (2) does not maintain during service on the board the
11 qualifications required for appointment to the board;

12 (3) violates a prohibition established by this
13 chapter;

14 (4) cannot, because of illness or disability,
15 discharge the member's duties for a substantial part of the member's
16 term; or

17 (5) is absent from more than half of the regularly
18 scheduled board meetings that the member is eligible to attend
19 during a calendar year, unless the absence is excused by majority
20 vote of the board.

21 (b) The validity of an action of the [~~dietitians~~] board is
22 not affected by the fact that it is taken when a ground for removal
23 of a member of the board exists.

24 (c) If the executive secretary has knowledge that a
25 potential ground for removal exists, the executive secretary shall
26 notify the presiding officer of the [~~dietitians~~] board of the
27 ground. The presiding officer shall then notify the governor that a

1 potential ground for removal exists.

2 SECTION 12. Section 701.056(a), Occupations Code, is
3 amended to read as follows:

4 (a) Each member of the [~~dietitians~~] board is entitled to
5 receive a per diem at the rate set by the legislature for state
6 employees in the General Appropriations Act for each day the member
7 engages in the business of the board.

8 SECTION 13. Section 701.057, Occupations Code, is amended
9 to read as follows:

10 Sec. 701.057. OFFICERS. Not later than the 30th day after
11 the date the governor appoints new board members, the [~~dietitians~~]
12 board shall meet to elect a presiding officer and assistant
13 presiding officer, who hold office according to board rules.

14 SECTION 14. Section 701.058, Occupations Code, is amended
15 to read as follows:

16 Sec. 701.058. MEETINGS. The [~~dietitians~~] board shall hold
17 at least two regular meetings each year as provided by board rules.

18 SECTION 15. Section 701.059, Occupations Code, is amended
19 to read as follows:

20 Sec. 701.059. TRAINING. (a) Before a [~~dietitians~~] board
21 member may assume the member's duties and before the member may be
22 confirmed by the senate, the member must complete at least one
23 course of a training program established by the board under this
24 section.

25 (b) The training program established by the [~~dietitians~~]
26 board must provide information to a participant regarding:

27 (1) this chapter;

- 1 (2) the programs operated by the board;
- 2 (3) the role and functions of the board;
- 3 (4) the rules of the board, with an emphasis on the
- 4 rules that relate to disciplinary and investigatory authority;
- 5 (5) the current budget for the board;
- 6 (6) the results of the most recent formal audit of the
- 7 board;
- 8 (7) the requirements of Chapters 551, 552, 2001, and
- 9 2002, Government Code;
- 10 (8) the requirements of the conflict of interest laws
- 11 and other laws relating to public officials; and
- 12 (9) any applicable ethics policies adopted by the
- 13 board or the Texas Ethics Commission.

14 (c) In developing the training program, the [~~dietitians~~]
15 board shall consult with the governor, the attorney general, and
16 the Texas Ethics Commission.

17 (d) If another state agency or entity is authorized to
18 establish the training requirements for board members, the
19 [~~dietitians~~] board shall allow that training instead of developing
20 its own program.

21 SECTION 16. Section 701.101, Occupations Code, is amended
22 to read as follows:

23 Sec. 701.101. EXECUTIVE SECRETARY. The commissioner shall
24 designate a department employee to serve as executive secretary of
25 the [~~dietitians~~] board.

26 SECTION 17. Section 701.102, Occupations Code, is amended
27 to read as follows:

1 Sec. 701.102. EXECUTIVE SECRETARY POWERS AND DUTIES. In
2 addition to performing other duties prescribed by this chapter and
3 by the department, the executive secretary of the [~~dietitians~~]
4 board shall:

5 (1) administer licensing activities for the board;

6 (2) keep full and accurate minutes of the board's
7 transactions and proceedings;

8 (3) serve as custodian of the board's files and
9 records;

10 (4) prepare and recommend to the board plans and
11 procedures necessary to implement the purposes and objectives of
12 this chapter, including rules and proposals on administrative
13 procedures;

14 (5) exercise general supervision over persons
15 employed by the department in the administration of this chapter;

16 (6) investigate complaints and present formal
17 complaints;

18 (7) attend all board meetings as a nonvoting
19 participant;

20 (8) handle the board's correspondence; and

21 (9) obtain, assemble, or prepare reports and other
22 information as directed or authorized by the board.

23 SECTION 18. Section 701.103(a), Occupations Code, is
24 amended to read as follows:

25 (a) Department personnel shall administer this chapter as
26 agents of the [~~dietitians~~] board.

27 SECTION 19. Section 701.104, Occupations Code, is amended

1 to read as follows:

2 Sec. 701.104. DIVISION OF RESPONSIBILITIES. The
3 [~~dietitians~~] board shall develop and implement policies that
4 clearly define the respective responsibilities of the board and the
5 staff of the board.

6 SECTION 20. Section 701.105, Occupations Code, is amended
7 to read as follows:

8 Sec. 701.105. QUALIFICATIONS AND STANDARDS OF CONDUCT
9 INFORMATION. The [~~dietitians~~] board shall provide, as often as
10 necessary, to its members and employees information regarding
11 their:

12 (1) qualifications for office or employment under this
13 chapter; and

14 (2) responsibilities under applicable laws relating
15 to standards of conduct for state officers or employees.

16 SECTION 21. Section 701.106(a), Occupations Code, is
17 amended to read as follows:

18 (a) The executive secretary or the executive secretary's
19 designee shall prepare and maintain a written policy statement to
20 ensure implementation of an equal employment opportunity program
21 under which all personnel transactions are made without regard to
22 race, color, disability, sex, religion, age, or national origin.
23 The policy statement must include:

24 (1) personnel policies, including policies relating
25 to recruitment, evaluation, selection, application, training, and
26 promotion of personnel, that are in compliance with Chapter 21,
27 Labor Code;

1 (2) a comprehensive analysis of the [~~dietitians~~] board
2 workforce that meets federal and state guidelines;

3 (3) procedures by which a determination can be made of
4 significant underuse in the board workforce of all persons for whom
5 federal or state guidelines encourage a more equitable balance; and

6 (4) reasonable methods to appropriately address those
7 areas of underuse.

8 SECTION 22. Section 701.151, Occupations Code, is amended
9 to read as follows:

10 Sec. 701.151. GENERAL POWERS AND DUTIES OF [~~DIETITIANS~~]
11 BOARD. The [~~dietitians~~] board shall:

12 (1) adopt an official seal;

13 (2) adopt and publish a code of ethics;

14 (3) establish the qualifications and fitness of
15 applicants for licenses, including renewed and reciprocal
16 licenses;

17 (4) revoke, suspend, or deny a license, probate a
18 license suspension, or reprimand a license holder for a violation
19 of this chapter, a board rule, or the code of ethics;

20 (5) spend money necessary to properly administer the
21 board's duties; and

22 (6) establish reasonable and necessary fees to
23 administer this chapter.

24 SECTION 23. Section 701.152, Occupations Code, is amended
25 to read as follows:

26 Sec. 701.152. GENERAL RULEMAKING AUTHORITY. (a) The
27 [~~dietitians~~] board may adopt rules consistent with this chapter.

1 (b) In adopting rules, the [~~dietitians~~] board shall
2 consider the rules and procedures of the Health and Human Services
3 Commission [~~Texas Board of Health~~] and the department and shall
4 adopt procedural rules not inconsistent with similar rules and
5 procedures of those entities.

6 SECTION 24. Section 701.153, Occupations Code, is amended
7 to read as follows:

8 Sec. 701.153. RULES RESTRICTING ADVERTISING OR COMPETITIVE
9 BIDDING. (a) The [~~dietitians~~] board may not adopt a rule
10 restricting advertising or competitive bidding by a person
11 regulated by the board except to prohibit a false, misleading, or
12 deceptive practice.

13 (b) The [~~dietitians~~] board may not include in rules to
14 prohibit false, misleading, or deceptive practices by a person
15 regulated by the board a rule that:

16 (1) restricts the person's use of any medium for
17 advertising;

18 (2) restricts the person's personal appearance or use
19 of the person's voice in an advertisement;

20 (3) relates to the size or duration of an
21 advertisement by the person; or

22 (4) restricts the use of a trade name in advertising by
23 the person.

24 SECTION 25. Section 701.154, Occupations Code, is amended
25 to read as follows:

26 Sec. 701.154. FEES. (a) After consulting the commissioner
27 or the department, the [~~dietitians~~] board by rule shall set fees in

1 amounts reasonable and necessary to cover the cost of administering
2 this chapter.

3 (b) The [~~dietitians~~] board may not set a fee that existed on
4 September 1, 1993, in an amount that is less than the amount of that
5 fee on that date.

6 SECTION 26. Section 701.155, Occupations Code, is amended
7 to read as follows:

8 Sec. 701.155. SEAL. (a) The [~~dietitians~~] board by rule may
9 require a license holder to:

10 (1) obtain a seal authorized by the board bearing the
11 license holder's name and the legend "Licensed Dietitian and
12 Nutritionist"; and

13 (2) affix the seal to formal documentation of
14 nutrition services provided by the license holder, as determined
15 necessary and appropriate by the board.

16 (b) If the [~~dietitians~~] board adopts rules under Subsection
17 (a), the rules must authorize a license holder to comply with
18 Subsection (a)(2) by maintaining a facsimile of the license
19 holder's seal on file at the location where services are provided
20 if:

21 (1) the services are provided:

22 (A) in a facility licensed under the Health and
23 Safety Code;

24 (B) on behalf of a local, state, or federal
25 government agency; or

26 (C) under other circumstances determined
27 reasonable and necessary by the board; and

1 (2) the facsimile is maintained on file at all times
2 during which the services are provided.

3 SECTION 27. Section 701.156, Occupations Code, is amended
4 to read as follows:

5 Sec. 701.156. [~~DIETITIANS~~] BOARD DUTIES REGARDING
6 COMPLAINTS. (a) The [~~dietitians~~] board by rule shall:

7 (1) adopt a form to standardize information concerning
8 complaints made to the board; and

9 (2) prescribe information to be provided to a person
10 when the person files a complaint with the board.

11 (b) The [~~dietitians~~] board shall provide reasonable
12 assistance to a person who wishes to file a complaint with the
13 board.

14 SECTION 28. Section 701.157, Occupations Code, is amended
15 to read as follows:

16 Sec. 701.157. POWERS AND DUTIES OF DEPARTMENT [~~TEXAS BOARD~~
17 ~~OF HEALTH~~]. To implement this chapter, the department [~~Texas Board~~
18 ~~of Health~~]:

19 (1) shall request and receive any necessary assistance
20 from state educational institutions or other state agencies;

21 (2) shall prepare information of consumer interest
22 describing the regulatory functions of the [~~dietitians~~] board, the
23 procedures by which consumer complaints are filed and resolved, and
24 the profession of dietetics;

25 (3) shall prepare a registry of licensed dietitians
26 and nutritionists and provisional licensed dietitians and
27 nutritionists and make the registry available to the public,

1 license holders, and appropriate state agencies; and

2 (4) may request the attorney general or the
3 appropriate county or district attorney to institute a suit to
4 enjoin a violation of this chapter in addition to any other action,
5 proceeding, or remedy authorized by law.

6 SECTION 29. Section 701.158(a), Occupations Code, is
7 amended to read as follows:

8 (a) The department shall file annually with the governor and
9 the presiding officer of each house of the legislature a complete
10 and detailed written report accounting for all funds received and
11 disbursed by the [~~dietitians~~] board or the department for the
12 administration of this chapter during the preceding fiscal year.

13 SECTION 30. Section 701.201, Occupations Code, is amended
14 to read as follows:

15 Sec. 701.201. PUBLIC INTEREST INFORMATION. (a) The
16 [~~dietitians~~] board shall prepare information of public interest
17 describing the functions of the board and the board's procedures by
18 which complaints are filed with and resolved by the board.

19 (b) The [~~dietitians~~] board shall make the information
20 available to the public and appropriate state agencies.

21 SECTION 31. Section 701.202, Occupations Code, is amended
22 to read as follows:

23 Sec. 701.202. COMPLAINTS. (a) The [~~dietitians~~] board by
24 rule shall establish methods by which consumers and service
25 recipients are notified of the name, mailing address, and telephone
26 number of the board for the purpose of directing complaints to the
27 board. The board may provide for that notice:

1 (1) on each registration form, application, or written
2 contract for services of a person regulated by the board;

3 (2) on a sign prominently displayed in the place of
4 business of each person regulated by the board; or

5 (3) in a bill for services provided by a person
6 regulated by the board.

7 (b) The [~~dietitians~~] board shall list with its regular
8 telephone number any toll-free telephone number established under
9 other state law that may be called to present a complaint about a
10 health professional.

11 SECTION 32. Section 701.203, Occupations Code, is amended
12 to read as follows:

13 Sec. 701.203. RECORDS OF COMPLAINTS. (a) The [~~dietitians~~]
14 board shall keep an information file about each complaint filed
15 with the board. The information file must be kept current and
16 contain a record for each complaint of:

17 (1) each person contacted in relation to the
18 complaint;

19 (2) a summary of findings made at each step of the
20 complaint process;

21 (3) an explanation of the legal basis and reason for a
22 complaint that is dismissed;

23 (4) the schedule established for the complaint under
24 Section 701.204(b) and a notation of any change in the schedule; and

25 (5) other relevant information.

26 (b) If a written complaint is filed with the [~~dietitians~~]
27 board that the board or department has authority to resolve, the

1 board, at least quarterly and until final disposition of the
2 complaint, shall notify the parties to the complaint of the status
3 of the complaint unless notice would jeopardize an undercover
4 investigation.

5 SECTION 33. Sections 701.204(a), (b), and (d), Occupations
6 Code, are amended to read as follows:

7 (a) The [~~dietitians~~] board shall adopt rules concerning the
8 investigation of a complaint filed with the board. The rules
9 adopted under this subsection shall:

10 (1) distinguish among categories of complaints;

11 (2) ensure that a complaint is not dismissed without
12 appropriate consideration;

13 (3) require that the board be advised of a complaint
14 that is dismissed and that a letter be sent to the person who filed
15 the complaint explaining the action taken on the dismissed
16 complaint;

17 (4) ensure that the person who filed the complaint has
18 an opportunity to explain the allegations made in the complaint;
19 and

20 (5) prescribe guidelines concerning the categories of
21 complaints that require the use of a private investigator and the
22 procedures for the board to obtain the services of a private
23 investigator.

24 (b) The [~~dietitians~~] board shall:

25 (1) dispose of each complaint in a timely manner; and

26 (2) establish a schedule for conducting each phase of
27 a complaint that is under the control of the board not later than

1 the 30th day after the date the board receives the complaint.

2 (d) The executive secretary shall notify the [~~dietitians~~]
3 board of a complaint that is not resolved in the time prescribed by
4 the board for resolving the complaint so that the board may take
5 necessary action on the complaint.

6 SECTION 34. Sections 701.2041(a), (c), (e), (f), (h), and
7 (i), Occupations Code, are amended to read as follows:

8 (a) In an investigation of a complaint filed with the
9 [~~dietitians~~] board, the board may request that the commissioner or
10 the commissioner's designee approve the issuance of a subpoena. If
11 the request is approved, the board may issue a subpoena to compel
12 the attendance of a relevant witness or the production, for
13 inspection or copying, of relevant evidence that is in this state.

14 (c) If a person fails to comply with a subpoena, the
15 [~~dietitians~~] board, acting through the attorney general, may file
16 suit to enforce the subpoena in a district court in Travis County or
17 in the county in which a hearing conducted by the board may be held.

18 (e) The board may delegate the authority granted under
19 Subsection (a) to the executive secretary of the [~~dietitians~~]
20 board.

21 (f) The [~~dietitians~~] board shall pay a reasonable fee for
22 photocopies subpoenaed under this section in an amount not to
23 exceed the amount the board may charge for copies of its records.

24 (h) All information and materials subpoenaed or compiled by
25 the [~~dietitians~~] board in connection with a complaint and
26 investigation are confidential and not subject to disclosure under
27 Chapter 552, Government Code, and not subject to disclosure,

1 discovery, subpoena, or other means of legal compulsion for their
2 release to anyone other than the board or its employees or agents
3 involved in discipline of the holder of a license, except that this
4 information may be disclosed to:

5 (1) persons involved with the board in a disciplinary
6 action against the holder of a license;

7 (2) professional dietitian and nutritionist licensing
8 or disciplinary boards in other jurisdictions;

9 (3) peer assistance programs approved by the board
10 under Chapter 467, Health and Safety Code;

11 (4) law enforcement agencies; and

12 (5) persons engaged in bona fide research, if all
13 individual-identifying information has been deleted.

14 (i) The filing of formal charges by the [~~dietitians~~] board
15 against a holder of a license, the nature of those charges,
16 disciplinary proceedings of the board, and final disciplinary
17 actions, including warnings and reprimands, by the board are not
18 confidential and are subject to disclosure in accordance with
19 Chapter 552, Government Code.

20 SECTION 35. Section 701.205, Occupations Code, is amended
21 to read as follows:

22 Sec. 701.205. PUBLIC PARTICIPATION. (a) The [~~dietitians~~]
23 board shall develop and implement policies that provide the public
24 with a reasonable opportunity to appear before the board and to
25 speak on any issue under the board's jurisdiction.

26 (b) The [~~dietitians~~] board shall prepare and maintain a
27 written plan that describes how a person who does not speak English

1 may be provided reasonable access to the board's programs.

2 SECTION 36. The heading to Section 701.251, Occupations
3 Code, is amended to read as follows:

4 Sec. 701.251. LICENSE REQUIRED; COMMISSION REGISTRATION;
5 EXCEPTIONS.

6 SECTION 37. Section 701.251(b), Occupations Code, is
7 amended to read as follows:

8 (b) Unless the person holds an appropriate license issued
9 under this chapter, a person may not:

10 (1) use the title or represent or imply that the person
11 has the title "licensed dietitian and nutritionist" or "provisional
12 licensed dietitian and nutritionist" or use the letters "LDN"
13 [~~"LD"~~] or "PLDN" [~~"PLD"~~]; [~~or~~]

14 (2) use a facsimile of those titles to indicate or
15 imply that the person is a licensed dietitian and nutritionist or
16 provisional licensed dietitian and nutritionist; or

17 (3) practice dietetics for compensation.

18 SECTION 38. Section 701.252, Occupations Code, is amended
19 to read as follows:

20 Sec. 701.252. LICENSE APPLICATION. (a) Each applicant
21 for a dietitian and nutritionist license must submit a sworn
22 application accompanied by the application fee.

23 (b) The [~~dietitians~~] board shall prescribe the application
24 form and may by rule establish dates by which applications and fees
25 must be received.

26 SECTION 39. Sections 701.253(c), (e), and (f), Occupations
27 Code, are amended to read as follows:

1 (c) The [~~dietitians~~] board shall prepare or approve an
2 examination. An examination prescribed by the board may be or may
3 include an examination given by the Commission on Dietetic
4 Registration or by a national or state testing service instead of an
5 examination prepared by the board.

6 (e) The [~~dietitians~~] board shall administer an examination
7 to qualified applicants at least twice each calendar year.

8 (f) The [~~dietitians~~] board shall waive the examination
9 requirement for an applicant who, at the time of application, is a
10 dietitian registered by the Commission on Dietetic Registration.

11 SECTION 40. Section 701.254, Occupations Code, is amended
12 to read as follows:

13 Sec. 701.254. QUALIFICATIONS FOR EXAMINATION. To qualify
14 for the licensing examination under this chapter, an applicant
15 must:

16 (1) possess a baccalaureate or postbaccalaureate
17 degree, conferred by a college or university regionally accredited
18 at the time of conferral, with:

19 (A) a major course of study in human nutrition,
20 food and nutrition, nutrition education, dietetics, home
21 economics, or food systems management; or

22 (B) an equivalent major course of study approved
23 by the [~~dietitians~~] board; and

24 (2) have completed an internship or preplanned,
25 documented, professional experience program in dietetics practice
26 of not less than 900 hours under the supervision of a licensed
27 dietitian and nutritionist or a registered dietitian approved by

1 the board.

2 SECTION 41. Section 701.255(a), Occupations Code, is
3 amended to read as follows:

4 (a) Not later than the 45th day after the date a properly
5 submitted and timely application is received and not later than the
6 30th day before the next examination date, the department shall
7 notify an applicant in writing of the receipt and investigation of
8 the applicant's application and any other relevant evidence
9 relating to applicant qualifications established by [~~dietitians~~]
10 board rule.

11 SECTION 42. Section 701.257, Occupations Code, is amended
12 to read as follows:

13 Sec. 701.257. REEXAMINATION. An applicant who fails the
14 examination three times must provide evidence to the [~~dietitians~~]
15 board that the applicant has successfully completed credit hours in
16 the applicant's areas of weakness before the applicant may apply
17 for reexamination.

18 SECTION 43. Section 701.258, Occupations Code, is amended
19 to read as follows:

20 Sec. 701.258. QUALIFIED PERSON ENTITLED TO LICENSE. The
21 [~~dietitians~~] board shall issue a license certificate as a licensed
22 dietitian and nutritionist to a person qualified for a license
23 under this chapter.

24 SECTION 44. Section 701.259, Occupations Code, is amended
25 to read as follows:

26 Sec. 701.259. PROVISIONAL LICENSE. (a) The [~~dietitians~~]
27 board may issue a license to use the title "provisional licensed

1 dietitian and nutritionist" to an applicant who files an
2 application, pays an application fee, and submits evidence of
3 successful completion of the education requirement under Section
4 701.254.

5 (b) A provisional licensed dietitian and nutritionist must
6 practice under the supervision and direction of a licensed
7 dietitian and nutritionist. The supervising licensed dietitian and
8 nutritionist must sign the applicant's initial application for a
9 provisional license.

10 (c) The [~~dietitians~~] board shall issue a license
11 certificate as a provisional licensed dietitian and nutritionist to
12 a person qualified for a provisional license under this chapter.

13 (d) A provisional license expires on the first anniversary
14 of the date of issuance and, if the supervising licensed dietitian
15 and nutritionist signs the renewal application, may be renewed
16 annually not more than twice by complying with the renewal
17 procedures under Section 701.301.

18 (e) A provisional licensed dietitian and nutritionist shall
19 comply with Sections 701.351 and 701.352.

20 SECTION 45. Section 701.260, Occupations Code, is amended
21 to read as follows:

22 Sec. 701.260. TEMPORARY LICENSE. (a) On receipt of an
23 application and payment of an application fee, the [~~dietitians~~]
24 board may grant a temporary license to an applicant who:

25 (1) is licensed in good standing as a dietitian and
26 nutritionist in another state that has licensing requirements that
27 are substantially equivalent to the requirements of this chapter;

1 (2) has passed a national or other examination that is
2 recognized by the board and relates to dietetics; and

3 (3) is sponsored by a person licensed by the board
4 under this chapter with whom the temporary license holder may
5 practice.

6 (b) The [~~dietitians~~] board may waive the requirement of
7 Subsection (a)(3) if the board determines that compliance with that
8 provision is a hardship to an applicant.

9 (c) A temporary license is valid until the date the
10 [~~dietitians~~] board approves or denies the temporary license
11 holder's application for a license. The board shall issue a license
12 under this chapter to the holder of a temporary license if:

13 (1) the temporary license holder passes the competency
14 examination required by Section 701.253;

15 (2) the board verifies that the temporary license
16 holder meets the academic and experience requirements for a license
17 under this chapter; and

18 (3) the temporary license holder satisfies any other
19 license requirements under this chapter.

20 (d) The [~~dietitians~~] board must complete the processing of a
21 temporary license holder's application for a license not later than
22 the 180th day after the date the board issues the temporary license.
23 The board may extend this deadline to receive pending examination
24 results.

25 SECTION 46. Section 701.261, Occupations Code, is amended
26 to read as follows:

27 Sec. 701.261. INACTIVE STATUS. The [~~dietitians~~] board by

1 rule may provide for a license holder to place the person's license
2 on inactive status. The board by rule shall provide for a time
3 limit for a license to remain on inactive status.

4 SECTION 47. Sections 701.301(a)-(d) and (f), Occupations
5 Code, are amended to read as follows:

6 (a) A license is valid for two years from [~~one year after~~]
7 the date of issuance and may be renewed biennially [~~annually~~].

8 (b) The commissioner [~~Texas Board of Health~~] by rule may
9 adopt a system under which licenses expire on various dates during
10 the year. For the year in which the license expiration date is
11 changed, a license fee payable on the original expiration date
12 shall be prorated on a monthly basis so that the license holder pays
13 only that portion of the fee allocable to the number of months the
14 license is valid. The license holder shall pay the total license
15 renewal fee on renewal of the license on the new expiration date.

16 (c) A person may renew an unexpired license by paying the
17 required renewal fee to the [~~dietitians~~] board before the license
18 expiration date.

19 (d) A person whose license has been expired for 90 days or
20 less may renew the license by paying to the [~~dietitians~~] board the
21 required renewal fee and a fee that is equal to half the amount of
22 the examination fee for the license. If a license has been expired
23 for more than 90 days but less than one year, the person may renew
24 the license by paying to the board all unpaid renewal fees and a fee
25 that is equal to the amount of the renewal fee for the license.

26 (f) Not later than the 30th day before a person's license
27 expiration date, the [~~dietitians~~] board shall send written notice

1 of the impending license expiration to the person at the person's
2 last known address according to board records.

3 SECTION 48. Section 701.302, Occupations Code, is amended
4 to read as follows:

5 Sec. 701.302. RENEWAL OF EXPIRED LICENSE BY OUT-OF-STATE
6 PRACTITIONER. The [~~dietitians~~] board may renew without
7 reexamination an expired license of a person who was licensed in
8 this state, moved to another state, and is currently licensed and
9 has been in practice in the other state for the two years preceding
10 the date the person applies for renewal. The person must pay to the
11 board a fee that is equal to the amount of the examination fee for
12 the license.

13 SECTION 49. Section 701.303, Occupations Code, is amended
14 to read as follows:

15 Sec. 701.303. CONTINUING EDUCATION. (a) The [~~dietitians~~]
16 board by rule shall establish a minimum number of hours of
17 continuing education required for license renewal under this
18 chapter.

19 (b) The [~~dietitians~~] board may assess the continuing
20 education needs of license holders and may require license holders
21 to attend continuing education courses specified by the board. The
22 board shall develop a process to evaluate and approve continuing
23 education courses.

24 (c) The [~~dietitians~~] board shall identify key factors for a
25 license holder's competent performance of professional duties. The
26 board shall adopt a procedure to assess the license holder's
27 participation in continuing education programs.

1 SECTION 50. Section 701.351(b), Occupations Code, is
2 amended to read as follows:

3 (b) A license certificate issued by the [~~dietitians~~] board
4 is the property of the board and shall be surrendered on demand.

5 SECTION 51. Section 701.353(a), Occupations Code, is
6 amended to read as follows:

7 (a) A person may not use a seal authorized by the
8 [~~dietitians~~] board unless the person holds a license issued under
9 this chapter.

10 SECTION 52. Subchapter H, Chapter 701, Occupations Code, is
11 amended by adding Sections 701.354, 701.355, and 701.356 to read as
12 follows:

13 Sec. 701.354. MEDICAL PROTOCOLS. Notwithstanding any other
14 law, a licensed dietitian and nutritionist acting within the scope
15 of the person's license and consistent with medical direction or
16 authorization as provided by Section 701.356 may accept, transcribe
17 into a patient's medical record, or transmit verbal or
18 electronically transmitted orders, including medication orders,
19 from a physician to another authorized health care professional
20 relating to the implementation or provision of medical nutrition
21 therapy and related medical protocols for a patient or a group of
22 patients.

23 Sec. 701.355. LABORATORY TESTS. Notwithstanding any other
24 law, a licensed dietitian and nutritionist acting within the scope
25 of the person's license and consistent with medical direction or
26 authorization as provided by Section 701.356 may order medical
27 laboratory tests relating to the implementation or provision of

1 medical nutrition therapy and related medical protocols for a
2 patient or a group of patients.

3 Sec. 701.356. MEDICAL DIRECTION OR AUTHORIZATION. A
4 medical direction or authorization required by Section 701.354 or
5 701.355 must be issued in accordance with Subchapter A, Chapter
6 157, and rules adopted by the Texas State Board of Medical Examiners
7 under that subchapter and must be provided as follows:

8 (1) in a health care facility, through a physician's
9 order, standing medical order, standing delegation order, or
10 medical protocol; or

11 (2) in a private practice setting, through a
12 physician's order, standing medical order, or standing delegation
13 order of the referring physician.

14 SECTION 53. Section 701.401, Occupations Code, is amended
15 to read as follows:

16 Sec. 701.401. GROUNDS FOR DISCIPLINARY ACTION. The
17 ~~[dietitians]~~ board shall revoke or suspend a license, place on
18 probation a person whose license has been suspended, or reprimand a
19 license holder for a violation of this chapter or a rule or code of
20 ethics adopted by the board.

21 SECTION 54. Section 701.402, Occupations Code, is amended
22 to read as follows:

23 Sec. 701.402. HEARING. (a) If the ~~[dietitians]~~ board
24 proposes to revoke or suspend a person's license, the person is
25 entitled to a hearing before the board.

26 (b) A member or employee of the ~~[dietitians]~~ board or a
27 department employee who carries out the functions of the board and

1 proposes to make a decision, a finding of fact, or a conclusion of
2 law in a proceeding pending before the board may communicate
3 directly or indirectly with a party to the proceeding or with the
4 party's representative only if notice and an opportunity to
5 participate are given to each party.

6 SECTION 55. Section 701.403, Occupations Code, is amended
7 to read as follows:

8 Sec. 701.403. SANCTIONS. The State Office of
9 Administrative Hearings shall use the schedule of sanctions adopted
10 by ~~[dietitians]~~ board rule for a sanction imposed as the result of a
11 hearing conducted by the office.

12 SECTION 56. Section 701.404, Occupations Code, is amended
13 to read as follows:

14 Sec. 701.404. PROBATION. The ~~[dietitians]~~ board may
15 require a license holder whose license suspension is probated to:

16 (1) report regularly to the board on matters that are
17 the basis of the probation;

18 (2) limit practice to areas prescribed by the board;
19 or

20 (3) continue or review continuing professional
21 education until the license holder attains a degree of skill
22 satisfactory to the board in those areas that are the basis of the
23 probation.

24 SECTION 57. Section 701.405, Occupations Code, is amended
25 to read as follows:

26 Sec. 701.405. MONITORING OF LICENSE HOLDER. (a) The
27 ~~[dietitians]~~ board by rule shall develop a system for monitoring a

1 license holder's compliance with the requirements of this chapter.

2 (b) Rules adopted under this section must include
3 procedures to:

4 (1) monitor for compliance a license holder who is
5 ordered by the [~~dietitians~~] board to perform certain acts; and

6 (2) identify and monitor license holders who represent
7 a risk to the public.

8 SECTION 58. Section 701.406, Occupations Code, is amended
9 to read as follows:

10 Sec. 701.406. INFORMAL PROCEDURES. (a) The [~~dietitians~~]
11 board by rule shall adopt procedures governing:

12 (1) informal disposition of a contested case under
13 Section 2001.056, Government Code; and

14 (2) an informal proceeding held in compliance with
15 Section 2001.054, Government Code.

16 (b) Rules adopted under Subsection (a) must:

17 (1) provide the complainant and the license holder an
18 opportunity to be heard; and

19 (2) require the presence of a representative of the
20 attorney general or the [~~dietitians~~] board's legal counsel to
21 advise the board or the board's employees.

22 SECTION 59. Section 701.408(a), Occupations Code, is
23 amended to read as follows:

24 (a) The [~~dietitians~~] board or a three-member committee of
25 board members designated by the board shall temporarily suspend the
26 license of a license holder if the board or committee determines
27 from the evidence or information presented to it that continued

1 practice by the license holder would constitute a continuing and
2 imminent threat to the public welfare.

3 SECTION 60. Section 701.501, Occupations Code, is amended
4 to read as follows:

5 Sec. 701.501. IMPOSITION OF ADMINISTRATIVE PENALTY. The
6 [~~dietitians~~] board may impose an administrative penalty on a person
7 licensed under this chapter who violates this chapter or a rule or
8 order adopted under this chapter.

9 SECTION 61. Section 701.503(a), Occupations Code, is
10 amended to read as follows:

11 (a) If the commissioner or the commissioner's designee
12 determines that a violation occurred, the commissioner or the
13 designee may issue to the [~~dietitians~~] board a report stating:

14 (1) the facts on which the determination is based; and

15 (2) the commissioner's or the designee's
16 recommendation on the imposition of an administrative penalty,
17 including a recommendation on the amount of the penalty.

18 SECTION 62. Section 701.504(b), Occupations Code, is
19 amended to read as follows:

20 (b) If the person accepts the determination and recommended
21 penalty of the commissioner or the commissioner's designee, the
22 [~~dietitians~~] board by order shall approve the determination and
23 impose the recommended penalty.

24 SECTION 63. Section 701.505(c), Occupations Code, is
25 amended to read as follows:

26 (c) The administrative law judge shall make findings of fact
27 and conclusions of law and promptly issue to the [~~dietitians~~] board

1 a proposal for a decision about the occurrence of the violation and
2 the amount of a proposed administrative penalty.

3 SECTION 64. Section 701.506, Occupations Code, is amended
4 to read as follows:

5 Sec. 701.506. DECISION BY [~~DIETITIANS~~] BOARD. (a) Based on
6 the findings of fact, conclusions of law, and proposal for
7 decision, the [~~dietitians~~] board by order may determine that:

8 (1) a violation occurred and impose an administrative
9 penalty; or

10 (2) a violation did not occur.

11 (b) The notice of the [~~dietitians~~] board's order given to
12 the person must include a statement of the right of the person to
13 judicial review of the order.

14 SECTION 65. Sections 701.507(a) and (b), Occupations Code,
15 are amended to read as follows:

16 (a) Within 30 days after the date the [~~dietitians~~] board's
17 order becomes final, the person shall:

18 (1) pay the administrative penalty; or

19 (2) file a petition for judicial review contesting the
20 occurrence of the violation, the amount of the penalty, or both.

21 (b) Within the 30-day period prescribed by Subsection (a), a
22 person who files a petition for judicial review may:

23 (1) stay enforcement of the penalty by:

24 (A) paying the penalty to the court for placement
25 in an escrow account; or

26 (B) giving the court a supersedeas bond approved
27 by the court that:

1 (i) is for the amount of the penalty; and
2 (ii) is effective until all judicial review
3 of the [~~dietitians~~] board's order is final; or

4 (2) request the court to stay enforcement of the
5 penalty by:

6 (A) filing with the court a sworn affidavit of
7 the person stating that the person is financially unable to pay the
8 penalty and is financially unable to give the supersedeas bond; and

9 (B) giving a copy of the affidavit to the
10 commissioner or the commissioner's designee by certified mail.

11 SECTION 66. This Act takes effect September 1, 2005.

S.B. No. 1209

By Dewell

A BILL TO BE ENTITLED

AN ACT:

relating to the licensing and regulation of the practice of dietetics and nutrition.

MAR 09 2005

Filed with the Secretary of the Senate

MAR 21 2005

Read and referred to Committee on HEALTH & HUMAN SERVICES

Reported favorably _____

Reported adversely, with favorable Committee Substitute; Committee Substitute read first time.

Ordered not printed

Laid before the Senate

Senate and Constitutional Rules to permit consideration suspended by: { unanimous consent
_____ yeas, _____ nays

Read second time, _____, and ordered engrossed by: { unanimous consent
a viva voce vote
_____ yeas, _____ nays

Senate and Constitutional 3 Day Rule suspended by a vote of _____ yeas, _____ nays.

Read third time, _____, and passed by: { A viva voce vote
_____ yeas, _____ nays

SECRETARY OF THE SENATE

OTHER ACTION:

Engrossed

Sent to House

Engrossing Clerk _____

Received from the Senate

Read first time and referred to Committee on _____

Reported _____ favorably (as amended) (as substituted)

Sent to Committee on (Calendars) (Local & Consent Calendars)

Read second time (comm. subst.) (amended); passed to third reading (failed) by a (non-record vote)
(record vote of _____ yeas, _____ nays, _____ present, not voting)

Constitutional rule requiring bills to be read on three several days suspended (failed to suspend)
by a vote of _____ yeas, _____ nays, _____ present, not voting.

Read third time (amended); finally passed (failed to pass) by a (non-record vote)
(record vote of _____ yeas, _____ nays, _____ present, not voting)

Returned to Senate.

Returned from House without amendment.

Returned from House with _____ amendments.

Concurred in House amendments by a viva voce vote _____ yeas, _____ nays.

CHIEF CLERK OF THE HOUSE

_____ Refused to concur in House amendments and requested the appointment of a Conference Committee to adjust the differences.

_____ Senate conferees instructed.

_____ Senate conferees appointed: _____, Chairman; _____
_____, _____, and _____

_____ House granted Senate request. House conferees appointed: _____, Chairman;
_____, _____, _____.

_____ Conference Committee Report read and filed with the Secretary of the Senate.

_____ Conference Committee Report adopted on the part of the House by: _____

{ a viva voce vote
_____ yeas, _____ nays

_____ Conference Committee Report adopted on the part of the Senate by:

{ a viva voce vote
_____ yeas, _____ nays

OTHER ACTION:

_____ Recommitted to Conference Committee

_____ Conferees discharged.

_____ Conference Committee Report failed of adoption by: _____

{ a viva voce vote
_____ yeas, _____ nays